

**Notice of Allowability**

Application No.

09/787,657

Examiner

Stephen Gucker

Applicant(s)

JOHNS ET AL.

Art Unit

1647

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/11/05.
2. ☒ The allowed claim(s) is/are 2,3,5-7,21,35-37, renumbered as 1-9, respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☐ ~~CORRECTED DRAWINGS (as "replacement sheets") must be submitted.~~ **DRAWINGS ACCEPTABLE.**

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_

7. ☒ Examiner's Amendment/Comment **SAME**

8. ☒ Examiner's Statement of Reasons for Allowance **✓**

9. ☐ Other \_\_\_\_\_

**JANET L. ANDRES**  
**SUPERVISORY PATENT EXAMINER**

### EXAMINER'S AMENDMENT & REASONS FOR ALLOWANCE

1. The finality of the last Office Action is withdrawn so that the following rejection may be made: claim 2 is rejected under USC 112, second paragraph, because the claim recites a genus of nucleic acids that hybridize to the sense strand of DNA, instead of the complement of the sense strand, therefore the genus of nucleic acids cannot encode a functional protein as the claim language requires, which renders the claim vague and indefinite.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mehdi Ganjeizadeh on 4/18/06.

An examiner's amendment to the record appears below.

In the claims:

In claim 2, line 1, inserted after "hybridizes to the":

--full complement of the--.

In claim 2, line 2, deleted "NOS" and inserted after "SEQ ID":

--NO:--.

In claim 5, line 2, deleted "NOS" and inserted after "SEQ ID":

--NO:--.

In claim 6, line 2, deleted "SEDQ ID NOS" and inserted after "shown in":

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--SEQ ID NO:--.

In claim 7, line 1, deleted "A recombinant" and inserted before "host cell comprising":

--An isolated recombinant--.

In claim 21, line 3, deleted "capable of directing" and inserted before "gene":

--which directs--.

In claim 21, line 5, inserted after "in the cells":

--to produce protein--.

In claim 35, line 2, deleted "a polypeptide" and inserted after "encodes":

--the polypeptide--.

In claim 36, line 2, deleted "a polypeptide" and inserted after "encoding":

--the polypeptide--.

3. The following is an examiner's statement of reasons for allowance: the instant allowed invention is based on the encoding DNA sequence of a calcium channel subunit  $\alpha 2\delta$ -C which the instant specification discloses is part of a functional calcium channel that mediates functional currents which interact with the pharmaceutical gabapentin, which is a trademarked drug in current clinical use (Neuropentin<sup>TM</sup>) for epilepsy.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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4. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technical Center 1600 general number which is (571) 272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (571) 272-0883. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached at (571) 272-0867. The fax phone number for this Group is currently (571)-273-8300.



Stephen Gucker

May 1, 2006